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Letter dated 2 December 2008 from the Secretary-General to the President of the Security Council

I have the honour to transmit herewith the eleventh report of the International Independent Investigation Commission, which was prepared pursuant to Security Council resolutions 1595 (2005), 1636 (2005), 1644 (2005), 1686 (2006), 1748 (2007) and 1815 (2008).

The report provides the Security Council with an overview of the progress made by the Commission since its previous report to the Council, dated 28 March 2008 (S/2008/210). The Commission reports that it has acquired new information that may allow it to link additional individuals to the network that carried out the assassination of former Prime Minister Rafiq Hariri. It also provides details of its assistance to the Lebanese authorities in their investigation of 20 other bombings and assassinations in Lebanon since October 2004 and an update on the links between those cases and the Hariri case.

The report follows my announcement that the Special Tribunal for Lebanon is fully on track to commence functioning on 1 March 2009. For this reason, the Commission requests an extension of its mandate to 28 February 2009. This extension would enable it to continue its investigation without interruption and gradually transfer its operations, staff and assets to The Hague, with a view to completing the transition by the time the Tribunal starts functioning.

I wish to thank the staff of the Commission for their excellent work in extremely difficult circumstances. In particular, I wish to thank Daniel Bellemare, who took office as Commissioner on 1 January 2008, for his leadership in advancing the investigation and in providing continuity in the work of the Commission. I also would like to thank the Government of Lebanon for its continued cooperation and support.

I would be grateful if you would bring this matter to the attention of the members of the Security Council. Meanwhile, I am transmitting the report to the Government of Lebanon.

(*Signed*) **Ban** Ki-moon

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Eleventh report of the International Independent Investigation Commission established pursuant to Security Council resolutions 1595 (2005), 1636 (2005), 1644 (2005), 1686 (2006), 1748 (2007) and 1815 (2008)

D. A. Bellemare
Commissioner

Beirut
December 2008

Summary

The Security Council requested the International Independent Investigation Commission to report to it on the progress of its investigation within six months of the adoption of Security Council resolution 1815 (2008) on 2 June 2008. The present report is the eleventh provided by the Commission, and the second report of Commissioner D. A. Bellemare, who took office on 1 January 2008.

The report provides an update on the progress that can be publicly reported. The Commission has acquired new information that may allow it to link additional individuals to the network that carried out the assassination of former Prime Minister Rafiq Hariri. The Commission also made further findings that help to identify the possible geographic origin of the suicide bomber.

Since its previous report, the Commission has also uncovered additional elements corroborating the connection between the Hariri attack and the other cases with which links had already been found. Preliminary indications also suggest that there may be a link between one additional case and the Hariri case.

The Commission continues to maintain regular contact and to interact closely with the Lebanese authorities on matters related to its investigations, as well as on matters relating to the security of the Commission and its staff. The Syrian Arab Republic has provided generally satisfactory cooperation.

The Commission's mandate currently ends on 31 December 2008. The Secretary-General has announced that the Special Tribunal for Lebanon is fully on track to commence functioning on 1 March 2009. The Commission requests that its mandate be extended to 28 February 2009 so that it can continue its investigation without interruption. During the extension period the Commission would gradually transfer operations, staff and assets to The Hague with a view to completing the transition by the time the Tribunal starts functioning.

The launch of the Tribunal does not mean that the investigation has been completed. While extensive work has been done on the investigation, the Commission, and the Office of the Prosecutor, once it begins to operate, must continue to gather evidence that would support an indictment before the Tribunal.

The Office of the Prosecutor of the Tribunal will need to continue to investigate all the cases within the Commission's current mandate in order to establish which of the cases are connected to the Hariri case in the manner required under the statute of the Tribunal. It will also require the full cooperation and support of the Lebanese authorities, as well as all other Member States, in order to conduct effective investigations and prosecutions.

I. Introduction

1. The present eleventh report of the International Independent Investigation Commission is the second report of Commissioner D. A. Bellemare who took office on 1 January 2008.

2. In April 2005, in the aftermath of the assassination of former Lebanese Prime Minister Rafiq Hariri, the Security Council decided to establish an international independent investigation Commission based in Lebanon to assist the Lebanese authorities in their investigation of all aspects of this terrorist act.[1] The approach of the Council at that time was that the investigation would be led by the Lebanese authorities, with the assistance of the independent Commission, and that prosecutions would be brought before Lebanese courts.

3. In 2007, that approach was changed. At the request of the Lebanese Government,[2] the Security Council created an international body, the Special Tribunal for Lebanon (the "Tribunal"), with a dual mandate: to investigate and prosecute the perpetrators of the Hariri assassination and related attacks. The Special Tribunal was to take the lead in the investigation and ultimately hold trials.[3]

4. On 30 November 2008, the Secretary-General stated that the Special Tribunal for Lebanon was fully on track to commence functioning on 1 March 2009,[4] which means that the investigation will be led, from that time forward, by the Office of the Prosecutor of the Tribunal in The Hague.

5. While extensive work has already been done on the investigation, the Commission, and the Office of the Prosecutor, once it begins to operate, must continue to gather evidence that would support an indictment before the Tribunal.

6. The momentum of the investigation must be maintained in the transition from the Commission to the Office of the Prosecutor. To ensure that disruption is kept to a minimum during the transition process, the Commission notes that an extension of its mandate until the day the Tribunal commences functioning would both allow the investigation to continue uninterrupted and facilitate a phased selection and movement of staff.

7. The Commission is sensitive to the fact that the beginning of operations of the Tribunal and the upcoming move to The Hague have brought expectations to a peak. These expectations are that indictments naming perpetrators will be filed as soon as the move to the Tribunal is completed. Although these expectations are understandable, the move does not in fact mean that the investigation has been completed.

8. While the Commission shares the frustration of the Lebanese people with the uncertainty about the time needed to complete the investigation, it can but stay true to its obligation to be guided solely by facts and evidence and to conduct its investigation in accordance with international standards.

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[1] See Security Council resolution 1595 (2005). Since then the Council has also given the Commission a mandate to provide technical assistance to the Lebanese authorities in the investigation of 20 other attacks.

[2] See S/2007/281, annex.

[3] See Security Council resolution 1757 (2007), annex, attachment, article 4.

[4] Statement of the Secretary-General after his meeting with Prime Minister Fouad Siniora of Lebanon, Doha, 30 November 2008. See also S/2008/734, para. 34.

9. As the move to The Hague approaches, the Commission is aware that in order to earn the sustained commitment of the Lebanese people and the international community it must continue to inspire the confidence of the public in its independence and professionalism.

10. Public confidence in both the Commission and the Tribunal will also help people feel safe about approaching them with information, and in doing so will help bring an end to impunity in Lebanon. Victims also need to feel confident about the process, and in that regard the Commission has placed a renewed emphasis on victim outreach.

11. In fostering public confidence, the Commission needs partners. The media, particularly the Lebanese media, has a key role to play in this process. Through the press, the Commission will endeavour to ensure that the public is kept accurately informed about the nature of its work and the next steps in the process. To that end the Commission will assist the media in enhancing its grasp of the legal processes and concepts involved in the work of the Commission and the Office of the Prosecutor.

12. With these considerations in mind, the report will attempt to strike a delicate balance, providing as much information as possible, while maintaining the confidentiality necessary to the investigation. It will present (a) the environment in which the Commission operates; (b) the challenges it faces and the progress achieved; (c) the cooperation received from States; (d) the process of transition to the Office of the Prosecutor of the Tribunal; and (e) conclusions.

II. The environment

13. During the current reporting period the security environment has been volatile, and there was serious violence in May 2008. At that time, the movements of Commission personnel were severely restricted and interviews and other scheduled investigative activities had to be postponed.

14. Following the events of May 2008, sporadic violence continued to erupt in various parts of the country. In recent weeks the security situation has improved, although the security environment in Lebanon and the region remains fragile. As a result, movement remains restricted for Commission personnel in certain areas. In addition, as the Commission approaches its transition to the Tribunal, it remains cognizant of the need to protect its staff, premises and holdings. It is with this and other safety and security concerns in mind that additional measures have recently been taken to protect Commission personnel and assets.

15. During the reporting period there have been important developments on the political front in Lebanon, including the signing of the Doha agreement on 21 May 2008, the election of the President, the formation of the national unity Government and the resumption of the National Dialogue. The President and the new Government have both affirmed Lebanon's continued commitment to the Tribunal.[5] The ministerial statement of the new Government, which received a vote of confidence from the Lebanese Parliament, stipulated that:

[5] See A/63/PV.6, p. 14. See also inaugural speech of President Sleiman, 25 May 2008.

Lebanon reiterates its commitment to the International Tribunal established under Security Council resolution 1757 (2007) to investigate the assassination of martyr Prime Minister Rafiq Hariri and his companions. Lebanon is cooperating with the relevant organs of the United Nations to bring the truth to light and to achieve the process of justice away from any politicization.[6]

III. Progress in the investigation

A. A secure environment for cooperation

16. The Commission remains mindful of the essential role played by witnesses and confidential sources as its investigation progresses and of the importance of identifying individuals prepared to appear as witnesses in future trials.

17. In light of the above, the Commission has refined its procedures to accommodate any potential witness who appears to be in physical danger in a secure environment. According to these procedures, persons considered by the Commission to have significant information relevant to the investigation, and whose testimony will likely be required in future judicial proceedings, will be considered eligible for protection if the Commission determines that they are in physical danger as a result of their cooperation.

18. To ensure continuity, the Commission's procedures on witness protection will be shared and coordinated with the Victims and Witnesses Unit of the Registry at the Tribunal.

19. A number of countries approached by the Commission have also indicated their willingness to cooperate with the procedures of the Commission in accepting witnesses and confidential sources who require protection. Measures have been taken to ensure the safety and security of those at risk, both during the life of the Commission and after transition to the Special Tribunal.

B. Investigative challenges

20. Operational challenges of varying magnitude are inherent to complex investigations. There are, however, additional challenges that are specific to the Commission's investigation, some of which have been noted in past reports.

21. During the reporting period a number of these challenges have had an impact on the progress of the Commission's work.

22. First, the Commission has faced difficulties in obtaining potentially sensitive information for investigative purposes.

23. The Commission also frequently sends formal requests for assistance for specific information to Member States. The Commission is mindful of the burden imposed on States in responding to such requests. While the vast majority of requests are responded to in a timely and comprehensive manner, the Commission notes that late or incomplete responses slow progress in the investigation.

[6] See Ministerial statement of 12 August 2008.

24. Finally, the Commission continues to have a pressing need for expertise in a number of key specialized areas. It will continue to seek the support of Member States to meet this need on a timely basis.

C. Progress achieved since the last report

25. For every inch of progress there is a mile of effort. Progress in an investigation is as much about excluding some leads as following up on others. During the reporting period, certain information collected was deemed reliable, and led to further investigation, while other information resulted in the exclusion of certain leads.

26. Those responsible for the attacks were professional and took extensive measures to cover their tracks and hide their identity. Much of the Commission's activity at this point in the investigation focuses on piercing this smokescreen to get at the truth.

1. Hariri investigation

27. The investigation into the Hariri case is actively continuing in all areas. During the reporting period, the Commission's work has included forensic examinations, gathering and analysis of information from a wide range of sources and 288 interviews.

28. Progress has been made. However, to describe particular aspects of such progress would also be to publicize the identity of persons who may have information relevant to the investigation and to put their lives in jeopardy. It may also compromise investigative opportunities currently being pursued as it would advertise the Commission's next steps.

29. In its previous report, the Commission stated that it had gathered evidence establishing that a network of individuals, the "Hariri network", acted in concert to carry out the assassination of Rafiq Hariri (S/2008/210, para. 25).

30. As a result of investigative and analytical work, the Commission has identified new information that may allow the Commission to link additional individuals with this network. Corroborating information has been obtained from a variety of sources and this information has reinforced the Commission's finding that members of the Hariri network are associated with other attacks.

31. The Commission has also continued its investigation relating to the identification of the suicide bomber in the Hariri attack. Investigative activity during the reporting period included collecting additional soil, sand and water samples from States in the region, including additional isotopic investigations. The results of these activities assist in the identification of the possible geographic origin of the suicide bomber.

32. It is widely known that the "money trail" is often key in investigations of terrorism. With that in mind, the Commission has placed renewed emphasis on reviewing financial transactions that may relate to the attacks. The Commission's investigation in this area has already revealed leads that are being pursued.

33. The Commission has also completed and reviewed the inventory of exhibits, including exhibits previously held by the Lebanese authorities. This inventory

consists of a total of over 10,000 forensic exhibits, including more than 7,000 that relate to the Hariri case.

2. Other investigations

34. Under its current mandate, the Commission is directed to assist the Lebanese authorities in the investigation of 20 attacks other than the Hariri attack. Investigations of these other cases also support the Hariri investigation.

35. In its last report, the Commission stated that the Hariri network, or parts thereof, were linked to some of the other cases within the Commission's mandate (ibid.).

36. Since that time, the Commission's investigation has found additional elements to corroborate those links. The Commission has also identified a potential link between one other investigation and the Hariri case. Given the sensitivity of this area of the investigation, no further details can be provided at this time.

37. A report comparing explosives used in the Hariri case to those used in all other cases which may reveal additional links, is also expected soon.

38. The results of recently conducted forensic examinations have revealed information regarding the explosives used in certain of the targeted attacks within the Commission's mandate and their placement in the vehicles used in the attacks.

39. Moreover, forensic examinations in five of the targeted attacks revealed new DNA profiles and fingerprints from the vehicles and other items used in the attacks. This new information increased the total number of fingerprints and DNA profiles found on items likely to have been handled by the perpetrators of the crimes.

40. The Commission has also been provided with a weapon that was allegedly used in the attack on former Minister Pierre Gemayel. The Commission has sent this weapon to a foreign laboratory for ballistics analysis to determine whether it was indeed used in the attack. Results are expected in the coming weeks.

41. Since March 2008, 29 persons have been indicted in connection with the case of the twin bus bombings in Ain Alaq.[7] Technical assistance was provided to the Lebanese authorities on the analysis of explosive devices used in the attacks and the results were handed to the Lebanese authorities. The Commission also found four DNA profiles in relevant areas of the crime scene, which were provided to the Lebanese judicial authorities for possible use in their proceedings.

42. A significant amount of investigation work related to all the cases within the Commission's mandate remains to be done. The Prosecutor will need to continue the investigation into these cases once he assumes his office in order to establish which cases are connected to the Hariri case in the manner required under the statute of the Tribunal.

[7] On 13 February 2007, two buses in the village of Ain Alaq, near Beirut, were bombed, resulting in the death of three people and injuries to 20 others. See S/2007/150, paras. 86-90.

IV. Cooperation with national and international authorities

A. Lebanese authorities

43. The Commission continues to maintain regular contact and interact closely with the Lebanese authorities on matters related to its investigation, as well as on matters relating to the security of the Commission and its staff.

44. The Commission continues to be extremely grateful to the Lebanese security forces for their relentless and effective support and assistance in protecting the Commission's staff and premises, without which it could not continue its work.

45. The Commission continues to cooperate with the Lebanese authorities. As the investigation continues, first under the auspices of the Commission and then the Office of the Prosecutor of the Tribunal, it is expected that the same level of cooperation will be provided.

46. The Prosecutor General of Lebanon remains the main interlocutor of the Commission. Since the last report there has been a dramatic increase in the number and complexity of requests for assistance made to the Lebanese authorities. These authorities have responded with dispatch and in a comprehensive manner and the Commission thanks them for this cooperation.

47. During the reporting period the Commission also held meetings with the investigative judge for the Hariri case and the judges assigned to other cases within the Commission's mandate.

48. As the investigation progresses, the Commission continues to share with the competent Lebanese authorities the substance of all relevant information obtained. The Commission recognizes that it is within the exclusive jurisdiction of the Lebanese authorities to detain or release individuals in Lebanon. In that regard, the Commission has continued to provide to the Lebanese authorities all the information that they need to make an independent determination on detention issues without resort to the Commission. The Commission has also provided its views on these issues to the Prosecutor General.

B. Syrian Arab Republic

49. Since its previous report, the Commission has submitted 24 requests for assistance to the Syrian Arab Republic, which provided responses within the deadlines specified by the Commission. The Syrian authorities have also, during the period, facilitated nine missions to the country.

50. The Commission acknowledges the logistical and security arrangements made by the Syrian authorities for its missions. The cooperation provided by the Syrian authorities continues to be generally satisfactory.

51. The Commission will continue to request the full cooperation of the Syrian Arab Republic in the discharge of its mandate.

C. Other States

52. Out of the 619 requests for assistance issued by the Commission during the reporting period, 96 were sent to 40 Member States other than Lebanon and the Syrian Arab Republic.

53. Member States responded positively to the Commission's requests. The Commission thanks Member States for their continued support and commitment to its work and renews its request for timely and complete responses.

V. Transition

54. The current mandate of the Commission ends on 31 December 2008. On 30 November 2008 the Secretary-General announced that the Special Tribunal is fully on track to commence functioning on 1 March 2009. In light of the situation, an extension of the mandate of the Commission is requested to enable the continuation of the Commission's investigations until the start of the Tribunal's operation.

55. During this extension period, the Commission would gradually transfer operations, staff and assets to The Hague with a view to completing the transition by the time the Special Tribunal starts functioning. As stated by the Secretary-General,[8] staff will continue to be employed by the Commission during this entire period, that is until 28 February 2009.

56. This phased relocation will allow the Office of the Prosecutor to have the staff required to be fully operational in The Hague by the time the Special Tribunal starts functioning. All measures should be taken to avoid any delay in investigative activities planned for this period.

57. On the day the Special Tribunal commences its functions, the Commissioner will assume his functions as Prosecutor and take the lead in the investigation.

58. No indictment will be filed until the Prosecutor is satisfied that there is sufficient evidence to meet the applicable legal threshold. When this happens, he will submit an indictment to the pre-trial judge for confirmation.

59. A chart providing an overview of the investigation and prosecution process envisaged for the Tribunal is provided in the annex to the present report.

VI. Conclusions

60. The Commission remains committed to the investigation of the crimes within its mandate.

61. The Commission's mandate currently ends on 31 December 2008 and the Secretary-General has announced that the Special Tribunal for Lebanon is fully on track to commence functioning on 1 March 2009. The Commission therefore requests that its mandate be extended to 28 February 2009, so that it can continue its

[8] S/2008/734, para. 21.

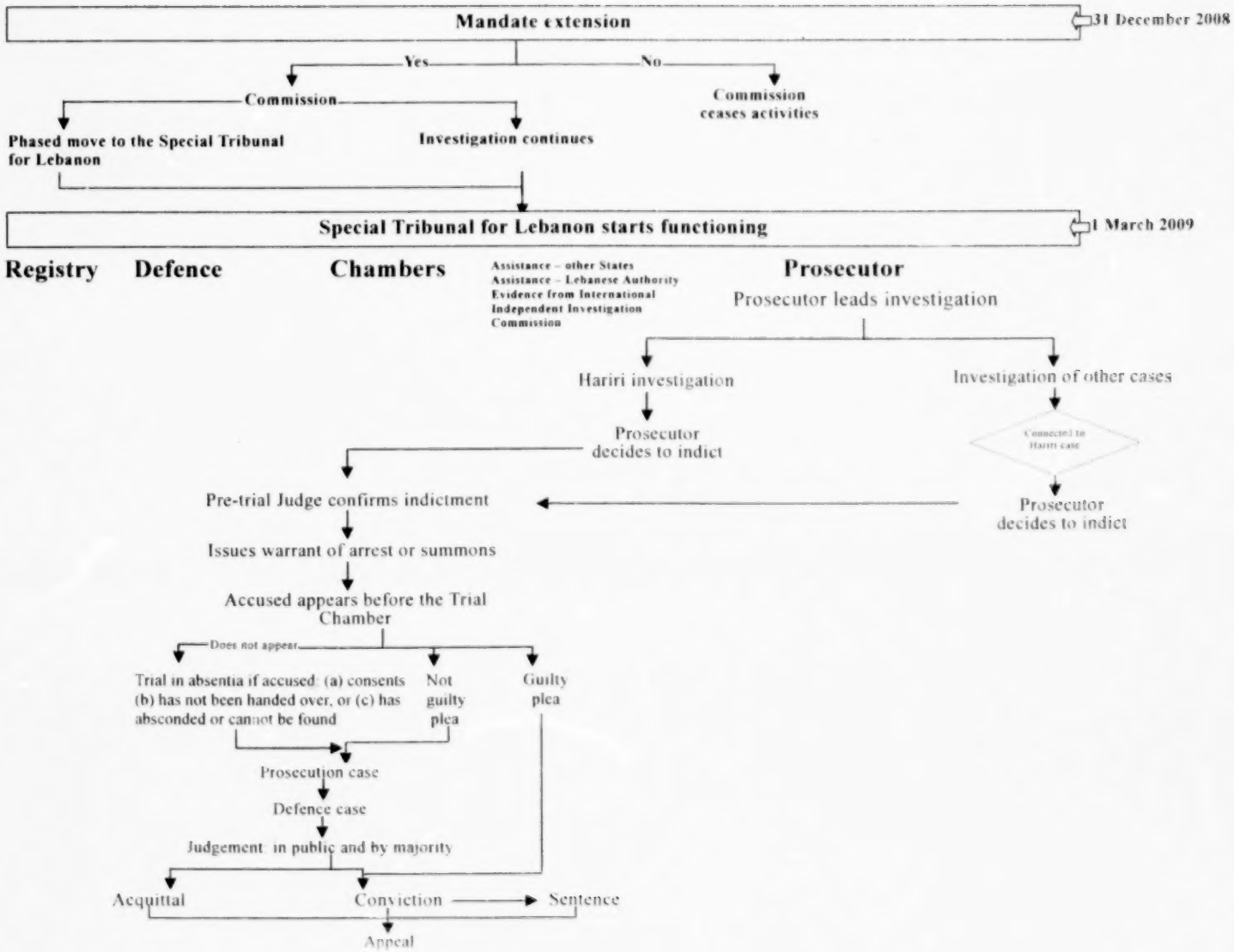
investigation without interruption and gradually transfer operations, staff and assets to The Hague.

62. There remains a significant amount of additional investigation work that must be undertaken in all the cases within the Commission's mandate. The Prosecutor will therefore need to continue the investigation into these cases once he assumes his office in order to establish which cases are connected to the Hariri case in the manner required under the statute of the Tribunal.

63. Both the Commission and the Office of the Prosecutor will need the unwavering support and full cooperation of all Member States in order to be able to conduct effective investigations and prosecutions.

64. The Lebanese people have shown a genuine commitment to the cause of justice. As the journey towards justice continues, this commitment must be matched with a respect for an independent and impartial judicial process that leaves no room for either a predetermined schedule or a prejudged outcome.

Annex


Mandate extension
31 December 2008
Yes
No
Commission
Commission ceases activities
Phased move to the Special Tribunal for Lebanon
Investigation continues
Special Tribunal for Lebanon starts functioning
1 March 2009
Registry
Defence
Chambers
Assistance – other States
Assistance – Lebanese Authority
Evidence from International Independent Investigation Commission
Prosecutor
Prosecutor leads investigation
Hariri investigation
Investigation of other cases
Connected to Hariri case
Prosecutor decides to indict
Prosecutor decides to indict
Pre-trial Judge confirms indictment
Issues warrant of arrest or summons
Accused appears before the Trial Chamber
Does not appear
Trial in absentia if accused: (a) consents (b) has not been handed over, or (c) has absconded or cannot be found
Not guilty plea
Guilty plea
Prosecution case
Defence case
Judgement: in public and by majority
Acquittal
Conviction
Sentence
Appeal